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Nos. 92-141, 92-5280, 92-5314, 92-5367, and 92-5368

In the Supreme Court of the United States

OCTOBER TERM, 1992

CHARLES J. PORTER, PETITIONER
v.
UNITED STATES OF AMERICA

GENO CHIARELLI, PETITIONER
v.
UNITED STATES OF AMERICA

ANTHONY DURISH, PETITIONER
v.
UNITED STATES OF AMERICA

LOUIS RAUCCI, PETITIONER
v.
UNITED STATES OF AMERICA

WILLIAM R. PORTER, PETITIONER
v.
UNITED STATES OF AMERICA

ON PETITIONS FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

RICHARD A. FRIEDMAN
Attorney

Department of Justice
Washington, D.C. 20530
(202) 514-2217

28 pp

QUESTIONS PRESENTED

1. Whether the district court erred in refusing to allow petitioner Charles Porter to call a witness whose testimony would have impeached the credibility of an individual who did not testify at trial, but whose declarations were introduced at trial through the testimony of a co-conspirator.

2. Whether the prosecutor made an improper argument to the jury or asked questions that were beyond the proper scope of the cross-examination of petitioner Charles Porter.

3. Whether the district court erred by giving the jury a copy of the indictment, but refusing to give the jury a copy of petitioner Charles Porter's "answer" to the indictment.

4. Whether the district court erred by refusing to sever certain co-defendants and grant them use immunity so that they might provide testimony for petitioner Charles Porter.

5. Whether the presentation to the grand jury of an indictment already signed by the United States Attorney violated petitioners' right to indictment by a grand jury.

6. Whether allegedly inconsistent verdicts relating to petitioner Chiarelli require setting aside the guilty verdict on one of the counts.

7. Whether the district court erred in allowing petitioner Charles Porter to testify in his own defense under restrictions on the scope of cross-examination by the United States and by other petitioners.

8. Whether the two racketeering acts that were the basis of petitioner Durish's racketeering convictions constituted a pattern of racketeering activity.

9. Whether the evidence proved several conspiracies rather than one conspiracy and thus varied impermissibly from the allegations in the indictment with respect to petitioner Raucci.

10. Whether the district court erred by not severing the trials of petitioners Raucci and William Porter.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. 1a-64a[1]) is unpublished, but the judgment is noted at 961 F.2d 1569 (Table).

JURISDICTION

The judgment of the court of appeals (Pet. App. 62a-64a) was entered on April 27, 1992. Petitions for rehearing were denied on June 5, 1992. The petitions for a writ of certiorari were filed on July 22, 1992 (No. 92-141), July 24, 1992 (No. 92-5280), and on July 27, 1992 (Nos. 92-5314, 92-5367, and 92-5368). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. This case involves charges that petitioners were involved in three courses of criminal conduct, all of which arose out of the activities of the Pittsburgh arm of the Mafia or La Cosa Nostra (LCN). See Pet. App. 2a, 4a-5a.

In the first course of criminality, petitioner Raucci, an underboss in the Pittsburgh LCN, introduced Joey Rosa, a future government witness, to Bud Levie, Raucci's Florida cocaine connection. Raucci and Rosa flew to

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[1] "Pet. App." refers to the appendix to the petition in No. 92-141.

Florida to meet Levie and to purchase two kilograms of cocaine. Rosa bought the cocaine from Levie and later resold it. For brokering the deal, Raucci took a $5,000 cut from Rosa's take. That arrangement continued for several transactions, but Rosa then began to deal with Levie behind Raucci's back in order to keep more of the profits for himself. See Pet. App. 5a-6a.

The second course of criminality involved Rosa's use of petitioner Charles Porter (another underboss in the Pittsburgh LCN) as an intermediary to facilitate drug purchases. Rosa attended a meeting at Porter's house where a deal was discussed involving Ramon Sosa, Porter's Florida cocaine connection. At the meeting, Porter and petitioner Chiarelli informed Rosa that they planned to do business with Sosa for a period of time and then defraud him by paying for an especially large quantity of drugs with counterfeit money. They anticipated splitting the profits among Porter, Chiarelli, Rosa, and petitioner Durish. All four went to Florida to purchase three kilograms of cocaine from Sosa. Following that initial purchase, Rosa made approximately 20 other drug buys from Sosa, in quantities ranging from three to ten kilograms. Before the group consummated its plan to defraud Sosa, however, Rosa personally defrauded Sosa by buying 15 kilograms of cocaine for $400,000, but giving Sosa only $100,000. Porter and Chiarelli learned of Rosa's scam shortly thereafter and demanded a share of the proceeds. See Pet. App. 6a-7a.

The third course of criminality involved the activities of petitioner William Porter, Charles Porter's younger brother. Evidence showed that William Porter negotiated with an undercover FBI agent for an unconsummated drug deal and that he intimidated a government witness who had provided the FBI with information about LCN activities. See Pet. App. 7a-8a.

2. After a jury trial in the United States District Court for the Western District of Pennsylvania, all five petitioners were convicted of racketeering and conspiring to commit racketeering, in violation of 18 U.S.C. 1962(c) and 18 U.S.C. 1962(d) (Counts 1 and 2); all petitioners except William Porter were convicted of conspiring to distribute narcotics and distributing narcotics, in violation of 21 U.S.C. 846 and 841(a) (Counts 3-6, 8-12, 14-17, and 20); Charles Porter was also convicted of structuring financial transactions to evade reporting requirements, in violation of 31 U.S.C. 5324(3) (Counts 23 and 24), filing false tax returns, in violation of 26 U.S.C. 7206(1) (Counts 28-30), assisting in the preparation of a false tax return, in violation of 26 U.S.C. 7206(2) (Count 36), and conspiring to violate the federal tax laws, in violation of 18 U.S.C. 371 (Count 38); Raucci was also convicted of structuring a financial transaction to evade reporting requirements, in violation of 31 U.S.C. 5324(3) (Count 21) and filing false tax returns, in violation of 26 U.S.C. 7206(1) (Counts 25-27); William Porter was also convicted of attempting to distribute narcotics, in violation of 21 U.S.C. 846 (Count 12), and retaliating against a witness, in violation of 18 U.S.C. 1513(a)(2) (Count 19). The district court sentenced Charles Porter to 28 years' imprisonment, Chiarelli to 22 years' imprisonment, Durish to 17-1/2 years' imprisonment, Raucci to 27 years' imprisonment, and William Porter to 17 years' imprisonment. The court imposed five-year terms of supervised release on all the petitioners except William Porter, whose term of supervised release was only three years. See Gov't C.A. Br. 6-7 and chart.[2]

[2] Because the chart that is included as an appendix to the government's brief in the court of appeals provides a helpful summary of the counts and racketeering acts charged against each peti-

3. The court of appeals unanimously affirmed all aspects of the district court's judgment in a lengthy unpublished opinion. Pet. App. 1a-64a. The opinion addressed ten of petitioners' claims in detail (as well as several claims raised by petitioners' co-defendants), and it disposed of 12 other claims summarily, stating that those claims were "clearly without merit." *Id.* at 3a n.1.

ARGUMENT

1. Petitioner Charles Porter first claims (92-141 Pet. 16-26) that the district court erred by refusing to allow him to call a witness to impeach the credibility of Ronald Plisco. The government did not call Plisco as a witness at trial, but Marvin Droznek, one of the government's witnesses, testified to certain statements Plisco had made. Droznek's testimony was admitted under Federal Rule of Evidence 801(d)(2)(E), which permits the admission of certain statements by co-conspirators. See Gov't C.A. Br. 43-44. Porter attempted to rebut Plisco's declarations by calling an Assistant United States Attorney who, according to Porter, would have testified that Plisco had not been truthful in his cooperation with the government. See *id.* at 44. Because the Assistant United States Attorney had no knowledge regarding the truth of the declarations recounted by Droznek, the district court refused to allow Porter to call him as a witness, explaining that his testimony would "not [have been] relevant or material in this case." See *ibid.* The court made it clear, however, that Porter could call Plisco and attempt to impeach Plisco's credibility directly. Porter ultimately decided not to call Plisco. See *id.* at 45-46. The court of appeals summarily rejected

tioner, we have lodged a copy of the brief with the Clerk of the Court.

Porter's challenge to that ruling. Pet. App. 3a n.1 (claim 2).

The district court's ruling was correct. The substance of the court's ruling was that it would be inappropriate to introduce extrinsic evidence to impeach the credibility of a hearsay declarant, where the impeaching testimony would not relate directly to the issues at trial. A hearsay declarant's statements may be impeached in the same manner as the testimony of a witness. See Fed. R. Evid. 806. The Federal Rules of Evidence, however, do not permit the introduction of extrinsic evidence of specific acts to attack the credibility of a witness. See Fed. R. Evid. 608(b). It therefore was proper for the court to prohibit the introduction of such extrinsic evidence to challenge the credibility of a hearsay declarant such as Plisco. Because the court made it clear that Porter could call Plisco as a witness and impeach his credibility directly, see Fed. R. Evid. 806 (allowing a party "to examine the declarant on the [admitted hearsay] statement[s] as if under cross-examination"); Fed. R. Evid. 608(b) (allowing inquiry into specific acts of conduct on cross-examination to challenge witness's credibility), there is no reason to believe that the ruling unduly restricted Porter's ability to convince the jury that Plisco was untruthful.

2. Petitioner Charles Porter (92-141 Pet. 27-35) next claims that his convictions should be overturned because of prosecutorial misconduct.

a. Before Porter took the stand, he secured a ruling limiting the scope of the government's cross-examination to the specific events about which he testified on direct examination. During the course of the government's cross-examination of Porter, petitioner made 30 separate objections to government questions, claiming that they transgressed the bounds set by the court's ruling; the court overruled 17 of those objections, but sus-

tained 13 of them. See Gov't C.A. Br. 55-57. The district court rejected petitioner's motion for a mistrial based on the inappropriate questions, finding that the prosecutor had "a reasonable basis" for believing that the questions were permissible. See Gov't C.A. Br. 58. The court of appeals summarily rejected Porter's challenge to the prosecutor's questions on cross-examination. Pet. App. 3a n.1 (claim 4).

b. In its closing argument to the jury, the government exhorted the jury to strike a blow against the Pittsburgh LCN, stating: "With your verdict, ladies and gentlemen, you are going to do one of two things: you will either in large measure restore this family [the Pittsburgh LCN] to its former healthy state, or you will sever the head from the body of this family. * * * The people of Western Pennsylvania wait your verdict." See 92-141 Pet. 8. The court of appeals did not address Porter's claim (see C. Porter C.A. Br. 46-47; C. Porter C.A. Reply Br. 11-14) that the convictions should be reversed because of the prosecutor's closing argument.

c. Porter offers no reason to believe that the district court's rulings on those issues present a question of general legal significance. Porter testified under unusual restrictions on the scope of cross-examination, which made it unclear precisely what types of questions would be permissible. Although the district court ruled on several occasions that specific questions asked by the prosecutor exceeded the permissible scope of that restricted cross-examination, the court also found that the excluded questions had a reasonable basis. The mere asking of the questions therefore was not improper.

Similarly, the prosecutor's exhortation to the jury to strike a blow against the Pittsburgh LCN was not improper. The indictment charged, and the evidence established, that petitioner and his co-defendants were leading figures in the racketeering activities of that

organization. The closing argument of a prosecutor need not be "confined to such detached exposition as would be appropriate in a lecture," *United States* v. *Wexler*, 79 F.2d 526, 530 (2d Cir. 1935), cert. denied, 297 U.S. 703 (1936). The prosecutor's use of rhetoric in the closing argument did not deny petitioner Charles Porter a fair trial.

3. Petitioner Charles Porter next argues (92-141 Pet. 35-41) that the district court erred in allowing the indictment to be provided to the jury during its deliberations, but refusing to allow Porter's "answer" to the indictment to be provided to the jury; he further contends that the indictment's references to the Pittsburgh LCN prejudiced him.

The court of appeals properly rejected those claims. Pet. App. 21a-24a. As the court pointed out, the indictment was not improperly spiced with inflammatory references to the "mob" and "La Cosa Nostra." Rather, as the court noted, "after defining the enterprise * * *, the indictment refers to the enterprise as 'the Pittsburgh LCN' almost universally." *Id.* at 22a-23a.

The court also did not abuse its discretion by sending the indictment to the jury. The district court instructed the jury that the indictment contained only charges and was not evidence. Pet. App. 23a. In light of the length and complexity of the indictment (116 pages covering 38 counts, see *id.* at 2a), the district court quite reasonably concluded that the jury would have great difficulty in conducting its deliberations without a written copy of the charges.

Finally, the district court did not err in refusing to submit Porter's "answer" to the jury along with the indictment. Porter's plea of not guilty to every charge was explained to the jury, and Porter's counsel was permitted to present evidence and argument to the jury

explaining in more detail why Porter believed he was not guilty of the offenses charged in the indictment.

4. Petitioner Charles Porter's final argument (92-141 Pet. 41-47) is that the district court erred by refusing to grant use immunity to his co-defendants and sever their trials to enable Porter to call them as witnesses. Porter contended at trial that several of his co-defendants would have testified in his favor if their trials had been severed from his. To evaluate that contention, the trial court asked Porter to submit affidavits from the prospective witnesses stating that they would testify and summarizing their testimony. When none of the witnesses submitted such an affidavit, the district court denied Porter's request. See Pet. App. 15a-17a.

The court of appeals rejected Porter's contention that the district court erred in not granting a severance. Pet. App. 15a-19a. It relied on two grounds. First, it noted Porter's failure to submit affidavits from the witnesses substantiating his claim that they would testify if a severance were granted. *Id.* at 16a-17a.[3] Second, it noted that even if the prospective witnesses had testified, the documentary evidence and testimony presented by the government would have impeached their testimony substantially. *Id.* at 18a. As the court viewed the record, "[i]t is exceedingly unlikely that the contradictory evidence offered by Porter would have withstood cross-examination." *Ibid.* Accordingly, the court of appeals concluded that the district court did not abuse its

[3] The court noted that one of the prospective witnesses, Chiarelli, may have stated in an unsworn statement that he would have testified if granted immunity. Pet. App. 17a n.4. The court pointed out, however, that there was no prospect that the government would grant immunity to Chiarelli, who was a defendant at trial. As the court of appeals stated, petitioner has not challenged the government's unwillingness to grant immunity to Chiarelli. See *ibid.*

discretion in denying Porter's motion to sever the trials of his co-defendants. *Id.* at 18a-19a.

The court of appeals was correct. In light of Porter's failure to provide affidavits substantiating his claim that the witnesses would testify as he contended, and the court's conclusion that any such testimony would have been thoroughly undermined through cross-examination, the district court did not abuse its discretion in denying his motion to sever the trials of his co-defendants.

5. Petitioners Chiarelli (92-5280 Pet. 13-18) and Durish (92-5314 Pet. 13-18) claim that the indictment should have been dismissed because it was presented to the grand jury pre-signed by the U.S. Attorney and that the district court should have allowed them to conduct discovery regarding the effect of the signature on the grand jury's deliberative process. The court of appeals summarily rejected petitioners' challenge to that ruling. Pet. App. 3a-4a n.1 (claim 7).

Federal Rule of Criminal Procedure 7(c)(1) provides that an indictment "shall be signed by the attorney for the government," but does not provide that the signature must await the grand jury's approval of the indictment. One court of appeals has suggested that pre-signing an indictment is not preferred, because of the risk that the signature might influence the grand jury and thus interfere with that jury's independent role in the institution of criminal proceedings. See *United States* v. *Singer*, 660 F.2d 1295, 1302 (8th Cir. 1981), cert. denied, 454 U.S. 1156 (1982); *United States* v. *Frantze*, 655 F.2d 128, 130-131 (8th Cir. 1981). No court of appeals, however, has held that the practice is reversible error. See, *e.g.*, *United States* v. *Brown*, 684 F.2d 841, 842 (11th Cir. 1982); *United States* v. *McKenzie*, 678 F.2d 629, 632-633 (5th Cir.), cert. denied, 459 U.S. 1038 (1982); *United States* v. *Levine*, 457 F.2d 1186, 1189 (10th Cir. 1972).

Whether or not a government attorney signs the indictment before presenting it to the grand jury, it is inevitable that the grand jury will understand that the prosecutor believes that probable cause exists with respect to the charges in the indictment. See *United States* v. *McKenzie*, 678 F.2d at 632. Accordingly, there is no reason to believe that the presence of a signature on an indictment would be likely to have a material effect on the deliberations of the grand jury. In light of the historic independence of the grand jury's function from that of the court and the prosecutor, the presigning of an indictment is no more a sufficient ground to dismiss an indictment than the prosecutor's failure to present evidence that might appear to exculpate the defendant. See *United States* v. *Williams*, 112 S. Ct. 1735, 1741-1746 (1992).

Even if it was inappropriate for the prosecutor to presign the indictment, any error in that regard was harmless. The final petit jury verdicts of conviction, based on evidence that proved guilt beyond a reasonable doubt, necessarily established that there was probable cause to bring the indictment. Hence, petitioners cannot complain credibly at this point that the prosecutor's signature improperly caused the grand jury to return an unfounded indictment. See *Bank of Nova Scotia* v. *United States*, 487 U.S. 250, 255-256 (1988); *United States* v. *Mechanik*, 475 U.S. 66, 71-72 (1986).

6. Petitioner Chiarelli also argues (92-5280 Pet. 19-24) that his convictions for the racketeering offenses should be overturned because of an inconsistency in the jury's verdict. The court of appeals summarily rejected his challenge on that point. Pet. App. 4a n.1 (claim 8).

With respect to the racketeering conspiracy charge (Count 1), the jury found four predicate acts to have been proved against Chiarelli: a comprehensive drug conspiracy between 1977 and 1990 (racketeering act 3), two in-

stances of cocaine distribution in 1986 (racketeering acts 14, 25), and interstate transportation of stolen property (racketeering act 33). With respect to the substantive racketeering charge (Count 2), the jury found that only three of those predicate acts had been proved; it found that one of the acts of cocaine distribution (racketeering act 25) was not proved. Finally the jury acquitted Chiarelli on Count 16 of the indictment, which charged that Chiarelli had violated 21 U.S.C. 841(a)(1) by committing the same act of cocaine distribution that the jury found had not been proved as to the substantive racketeering count. See Gov't C.A. Br. App. (chart).

Contrary to Chiarelli's argument (92-5280 Pet. 23-24), this Court's decision in *United States* v. *Powell*, 469 U.S. 57 (1984), disposes of his claim. In *Powell*, this Court held that the existence of inconsistent verdicts of acquittal is not a basis for overturning verdicts of conviction. As the Court explained,

> inconsistent verdicts—even verdicts that acquit on a predicate offense while convicting on the compound offense—should not necessarily be interpreted as a windfall to the Government at the defendant's expense. It is equally possible that the jury, convinced of guilt, properly reached its conclusion on the compound offense, and then through mistake, compromise, or lenity, arrived at an inconsistent conclusion on the lesser offense.

Id. at 65. Hence, the proper rule "is simply to insulate jury verdicts from review on this ground." *Id.* at 69. Chiarelli's argument (92-5280 Pet. 24 (emphasis omitted)) that the verdicts in this case are "contradictory," rather than "inconsistent," does not provide a sufficient

basis for rejecting the court of appeals' decision.[4] Moreover, the existence of three other racketeering acts for both of the racketeering charges—when only two are required—makes it clear that there is no possibility that any confusion affected the actual verdict entered by the district court.

7. Petitioner Chiarelli's final claim (92-5080 Pet. 25-29) is that the district court improperly restricted his cross-examination of Charles Porter, in violation of the Confrontation Clause of the Sixth Amendment. As noted above, Porter testified under a ruling by the trial court prohibiting other parties from questioning him with respect to any matter not within the scope of his direct examination. Chiarelli argues that Porter's failure to testify about the existence of the Pittsburgh LCN or whether any of the defendants were members of that enterprise left the jury with the impression that Porter tacitly was admitting the existence of the criminal enterprise, and that the trial court's unwillingness to allow Chiarelli to question Porter about those matters violated the Confrontation Clause.

The court of appeals correctly regarded that argument as meritless. Pet. App. 19a-21a. As it explained,

> Porter's testimony [wa]s no more a tacit admission of the existence of the Pittsburgh LCN than if he declined to testify altogether. * * * Porter in no way implicated himself or any of the other defendants in

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[4] Chiarelli's reliance (92-5280 Pet. 23) on *Finnegan* v. *Fountain*, 915 F.2d 817 (2d Cir. 1990), is entirely misplaced. In that case, the court of appeals held in a civil case that a judge could not enter a judgment that disregarded any material finding of the jury. Putting to one side the concerns of the criminal process that motivated the decision in *Powell*, *Finnegan* cannot support Chiarelli because the judgment in this case did not disregard any of the jury's findings.

> criminal activity. Therefore, this limitation on cross-examination did not constitute the clear and substantial prejudice resulting in a manifestly unfair trial that is necessary for reversal.

Id. at 20a. Because Porter did not testify about the Pittsburgh LCN, there was no testimony from him that Chiarelli was denied the right to confront. The district court's ruling that Chiarelli could not cross-examine Porter about matters not covered in Porter's testimony therefore did not violate the Confrontation Clause.

8. Petitioner Durish claims (92-5314 Pet. 7-12) that there is a conflict among the circuits on the question whether the "pattern" requirement of a racketeering conviction under 18 U.S.C. 1962(c) is satisfied where the only predicate acts are a substantive offense and conspiracy to commit that offense. As the court of appeals recognized, however, that claim does not accurately describe Durish's situation. See Pet. App. 36a-41a.

The jury found that the government had proved that Durish had committed two predicate acts: the comprehensive drug conspiracy between 1977 and 1990 (racketeering act 3) and an instance of cocaine distribution (racketeering act 14). See Gov't C.A. Br. App. (chart at 1, 3). As the court of appeals explained, the drug conspiracy alleged in racketeering act 3 was not simply a conspiracy to engage in the cocaine distribution alleged in racketeering act 14; it was "a multiple objective conspiracy of which this one weekend transaction is only a part." Pet. App. 37a-38a.

The court of appeals concluded that the larger conspiracy could satisfy the "pattern" requirement if the enterprise was engaged in a pattern of racketeering activity, and if Durish knew of the activity and agreed to further the affairs of the enterprise. Pet. App. 38a-39a. After reviewing the evidence, the court decided that "the jury could properly conclude that Durish was familiar

with the affairs of the LCN" and "that his participation in the April 1985 purchase demonstrated his commitment to the success of the enterprise." *Id.* at 41a. Durish does not challenge the court of appeals' conclusion that participation in an enterprise engaged in a pattern of racketeering activity can satisfy the pattern requirement; the court of appeals' fact-specific determination that Durish participated in such an enterprise does not warrant review by this Court.

9. Petitioner Raucci claims (92-5367 Pet. 6-9) that this Court's decision in *Kotteakos* v. *United States*, 328 U.S. 750 (1946), requires reversal of his conviction for conspiracy to distribute controlled substances because of a prejudicial variance between the indictment and the proof at trial.

Count 3 of the indictment alleged a single drug conspiracy consisting of multiple sub-schemes tied together as a master conspiracy by the involvement of the Pittsburgh LCN and the involvement of the co-conspirators in that enterprise. The proof at trial showed both the multiple sub-schemes and the master drug conspiracy of the Pittsburgh LCN. See Pet. App. 28a. The court of appeals correctly rejected Durish's claim, explaining that there was "substantial evidence * * * to support the finding of a single master conspiracy with subsidiary schemes." *Ibid.* It therefore concluded that "there is no variance between the indictment and the proof at trial," much less a prejudicial variance sufficient to justify reversal. *Id.* at 28a-29a.

Raucci's argument that the government failed to prove a single overarching conspiracy connecting all of petitioners' drug activities rests on the premise that "[t]he conspiracy alleged in Count Three of the Indictment was a separate drug conspiracy that had nothing to do with the La Cosa Nostra." 92-5367 Pet. 8-9. The court of appeals, however, correctly ruled that the proof at trial ad-

equately established that the Pittsburgh LCN was involved in the conspiracy. That fact-specific ruling does not, in any event, present a question suitable for this Court's review. *E.g.*, *Tiffany Fine Arts, Inc.* v. *United States*, 469 U.S. 310, 317 n.5 (1985).[5]

10. Finally, petitioners Raucci (92-5367 Pet. 9-13) and William Porter (92-5368 Pet. 4-6) argue that the district court erred in refusing to sever their cases for separate trials.

a. Raucci argues that counsel for Charles Porter was so ineffective that the district court should have granted Raucci a severance to relieve him of the prejudice he suffered from the ineffective representation. 92-5367 Pet. 9-13. The court of appeals concluded, however, that Raucci "suffered no prejudice as a result of the joinder." Pet. App. 21a n.5. Raucci offers no reason to believe that the fact-specific determination of the court of appeals on that score presents a legal question of general significance.[6]

b. William Porter argues that he was prejudiced by the joint trial, because he was a relatively minor player in the conspiracy and there was a substantial chance that evidence against his brother Charles Porter would be incorrectly held against him. 92-5368 Pet. 4-6. The court of appeals properly rejected that claim, pointing out that William Porter was acquitted of all the counts

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[5] Raucci's claim (92-5367 Pet. 8-9) that the government "has [n]ever contended that there was a master scheme as it related to Count Three involving the La Cosa Nostra" is demonstrably false. See Gov't C.A. Br. 60 (referring to "LCN involvement throughout the entire period" of the conspiracy in Count 3).

[6] Raucci does not contend "that the situation at trial involved antagonistic or irreconcilable defenses," see 92-5367 Pet. 9-10, so the petition need not be held for *Zafiro* v. *United States*, No. 91-6824, which presents the question whether the existence of inconsistent defenses is a sufficient basis for severance.

in which both he and his brother were charged. Pet. App. 14a-15a. Accordingly, the court concluded: "It is clear that the jury did compartmentalize the evidence and that William Porter was not prejudiced by being tried with his brother." *Id.* at 15a. William Porter presents no reason to believe that the court of appeals' evaluation of the record on that point presents a legal question meriting this Court's review.

CONCLUSION

The petitions for a writ of certiorari should be denied.

Respectfully submitted.

KENNETH W. STARR
Solicitor General

ROBERT S. MUELLER, III
Assistant Attorney General

RICHARD A. FRIEDMAN
Attorney

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